IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1178 OF 2006

Mrs Sayyad Anjum Noor Mohd .. Petitioner

versus

Shri Mustaq Ahmed Saheb Khatib & ors.Respondents

Mr.M.M.Sathaye for Petitioner

CORAM : D.G.KARNIK, J

DATED : 27th February, 2006

P.C.

1. This Writ Petition is directed against the order dated 23rd November, 2005 passed by the learned Civil Judge Senior Division rejecting the application for review. The original order which was sought to be reviewed is also challenged simultaneously.

2. The petitioner herein had filed a suit initially for injunction restraining the respondents from encroaching. Subsequently, the plaint was amended and a prayer for removal of the encroachment was made. Therein an application was made for appointment of a Court Commissioner for measurement of the land. That application was rejected by the impugned order.

3. Whether the respondents have committed encroachment on the suit property or not is a question of fact. Evidence is required to be adduced by the petitioner for proving the encroachment. One of the evidence that can be adduced by the plaintiff to prove the encroachment is by examining an expert surveyor who measures the land. The Maharashtra Land Revenue Code makes a provision for measurement of the land through a government surveyor. The petitioner is therefore free to aply to the D.I.L.R. for measurement of the land and then examine the surveyor as expert witness. It is not necessary to appoint a Court Commissioner for the said purpose. In fact appointment of the Court Commissioner would be to collect the evidence for the petitioner.

4. I see no error in the view taken by the courts below. Hence, Writ Petition is rejected summarily.

(D.G.KARNIK, J)

rng.